

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Sears Logistics Services, Inc.

Plaintiff,

Case No. 2:14-cv-999

v.

Judge Watson

Phoenix Warehouse,

Magistrate Judge Kemp

Defendant.

**PHOENIX WAREHOUSE'S MOTION TO STAY CURRENT CASE SCHEDULE TO
PROVIDE FOR CONSOLIDATION OF CASE 2:15-cv-02834-MHW-EPD FILED
SEPTEMBER 16, 2015 WITH THIS CASE.**

Phoenix Warehouse moves this court to briefly stay the current schedule to allow for the consolidation, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, of *Phoenix Warehouse v. Innovel Solutions Inc.*, 2:15-cv-02834-MHW-EPD with this case.

Given the date of the filing, counsel have not appeared for Innovel in 2:15-cv-02834, and as such, the undersigned believes that the court in the new case cannot order consolidation in the absence of defense counsel to respond to the motion. That said, counsel for plaintiff in this case have corresponded with the undersigned in August of this year in reference, at least in part, to the dispute set forth in 2:15-cv-02834 and plaintiff's counsel have requested a courtesy copy of the complaint, so are reasonably expected to appear for Innovel in the new case.

Upon appearance of counsel in the new case, Phoenix Warehouse will move for consolidation of pre-trial proceedings and trial in case 2:15-cv-02834, but not

consolidation for the purposes of judgment and appeal. The two cases are appropriate for consolidation for the following reasons:

1. The two cases involve common questions of law. The plaintiffs in both cases are seeking determinations arising from disputes over rent and/or money paid or not paid under the interpretation of the same Lease and Lease Amendment.
2. The two cases involve common questions of fact because both arise from disputes regarding the parties' actions, interpretation and performance under a Lease, as amended, between the parties and/or their successors in interest, with payments processed and received, or not, by the same personnel and party representatives.
3. The controversy set forth in case 2:15-cv-02834 did not exist at the time the complaint was filed in this case.
4. Judicial convenience and economy will be promoted by consolidation of the actions. Consolidation will result in one trial which will bind all plaintiffs and defendants. This will save time and avoid unnecessary costs to the defendant, the plaintiff and witnesses who would otherwise be required to testify in two cases.
5. Consolidation will not unduly delay the final disposition of this matter and greatly speed the final disposition of case 2:15-cv-02834, such that the consolidation of the cases will be a net savings in time, expense, and effort by the parties and courts. Given the discovery conducted to date, only a very modest period of additional discovery will be necessary to prepare the parties for the litigation of case 2:15-cv-02834.

Given, however, the time necessary for defense counsel to appear and respond to the complaint in case 2:15-cv-02834, the greatest benefit by consolidation would accrue upon the staying of this action for a brief period of time to allow for the response

to the complaint in case 2:15-cv-02834, the motion to consolidate to be filed in that case, and the coordination of the case schedule for both cases.

WHEREFORE, Phoenix Warehouse requests that its motion to stay the current case schedule be granted for the reasons set forth above.

Respectfully submitted,

/s/ Ed Hubbard

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Trial Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing was duly served via ECF on this 22nd day of September, 2015, upon the following:

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